

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

IN RE: LORI ALKIRE,

Debtor.

Case No. 04-30196-DDO

Chapter 7

FIRST NATIONAL BANK OF OMAHA,

Plaintiff,

v.

LORI ALKIRE,

Defendant.

**COMPLAINT SEEKING
EXCEPTION TO DISCHARGE
PURSUANT TO 11 U.S.C.
§523(a)(2)(A)**

A.P. No. 04-_____

Honorable Dennis D. O'Brien

The Plaintiff, First National Bank of Omaha, by its attorney, for its Complaint against the Defendant, alleges as follows:

1. This Court has jurisdiction over this proceeding pursuant to 28 U.S.C. §1334 and §157, and this matter is a core proceeding pursuant to 28 U.S.C. §157.

2. The Debtor filed a Petition, and an Order for Relief was entered under 11 U.S.C. Chapter 7 on January 15, 2004.

3. At all times mentioned herein, the Defendant, Lori Alkire, had possession of a First National Bank of Omaha credit account, number 4046-7301-4764-0627, which the Defendant opened in October 2002.

4. On November 6, 2003, the balance on the abovementioned account was \$8,746.61.

5. On November 7, 2003, the Defendant took a single cash advance in the amount of \$6,200.00. See copies of account statements, attached hereto and incorporated herein, marked Exhibit A.

6. The Defendant failed to make the minimum monthly payments and did not even make a single payment on this account after incurring the abovementioned \$6,200.00 cash advance.

7. On October 16, 2003, even prior to taking the abovementioned \$6,200.00 cash advance on this account, the Debtor contacted her attorney regarding filing bankruptcy.

8. On November 7, 2003, the same day the Debtor took the abovementioned \$6,200.00 cash advance on this account, she met with her bankruptcy attorney and paid \$910.00 towards her bankruptcy filing fees and bankruptcy attorney's legal fees.

9. On January 15, 2004, more than sixty days after paying her bankruptcy attorney's legal fees in full, the Debtor's Chapter 7 bankruptcy was actually filed with the Court.

10. Pursuant to the Debtor's sworn Statement of Financial Affairs, in the year prior to and up through the Debtor's bankruptcy filing, the Debtor did not transfer any property other than in the ordinary course of the Debtor's financial affairs, the Debtor did not suffer any losses from fire, theft, other casualty, or gambling, and the Debtor did not have any property repossessed, sold at foreclosure, or transferred through a deed in lieu of foreclosure.

11. At the time of the bankruptcy filing, pursuant to the Debtor's sworn Schedule I, the Debtor's monthly income was zero.

12. At the time of the bankruptcy filing, pursuant to the Debtor's sworn Schedule J, the Debtor's monthly living expenses were approximately \$1,840.00.

13. Upon information and belief, the minimum monthly payments on the Debtor's \$52,000.00 of unsecured debt were between \$1,100.00 and \$1,600.00 each month.

14. At the time of the bankruptcy filing, the Debtor had no monthly disposable income from which to pay even the minimum monthly payments on her unsecured debt which was in excess of \$52,000.00 (the Debtor listed the balance on the Plaintiff's account in her sworn Schedule F as \$8,746.61 (which was the approximate balance on this account as of October 20, 2003, however, the actual balance on this account at the time of the bankruptcy filing was \$15,952.27 (see Exhibit A attached hereto), therefore, the Debtor's total unsecured debt was at least \$52,203.73 (\$44,998.07 listed by the Debtor on her sworn Schedule F, plus \$7,205.66 of additional debt owing to the Plaintiff not listed by the Debtor in her sworn Schedule F)).

15. When the Defendant accepted and opened this credit account with the Plaintiff, she agreed to abide by the terms set forth in the account agreement.

16. The Defendant's use of this account was governed by the terms of the account agreement.

17. At the time the Defendant incurred the abovementioned \$6,200.00 cash advance, the Defendant represented that she had the intention and ability to repay said debt and represented that she agreed to abide by the terms of the account agreement.

18. The Plaintiff relied upon the Defendant's representation of intent and ability to repay and representation of agreement to abide by the terms of the account agreement in allowing the Defendant to use this account on November 7, 2003.

19. The Defendant's use of this account did not raise and should not have raised any "red flags" or suspicions on the part of the Plaintiff regarding the truthfulness of the Defendant's representation of intent and ability to pay the Plaintiff and representation of agreement to abide by the terms of the account agreement.

20. The Plaintiff was justified in its reliance upon the Defendant's representation of intent and ability to repay and representation of agreement to abide by the terms of the account agreement.

21. Upon information and belief, the Defendant incurred the abovementioned \$6,200.00 cash advance on the account at a time when the Defendant was unable to meet her existing financial obligations as they became due.

22. At the time the Defendant incurred the abovementioned \$6,200.00 cash advance, the Defendant intended to deceive the Plaintiff in that she either had no intention to repay said debt to

the Plaintiff, or the Defendant knew or should have known that she had no ability to repay said debt to the Plaintiff, or the Defendant made such representation of intent and ability to repay and representation of agreement to abide by the terms of the account agreement with a reckless disregard as to the truthfulness of said representation.

23. Therefore, the Defendant obtained said money from the Plaintiff by false pretenses, false representation, or actual fraud, in the amount of \$6,200.00, and for the above reasons, this indebtedness to Plaintiff, First National Bank of Omaha, is nondischargeable in bankruptcy pursuant to 11 U.S.C. §523(a)(2)(A).

WHEREFORE, Plaintiff, First National Bank of Omaha, respectfully prays that this Court:

A. Determine that the Defendant's indebtedness to the Plaintiff is an exception to discharge pursuant to 11 U.S.C. §523(a)(2)(A),

B. Grant judgment to the Plaintiff, First National Bank of Omaha, against the Defendant, Lori Alkire, in the amount of \$6,200.00, plus interest from the date of the bankruptcy filing, plus the Plaintiff's costs and disbursements incurred for the collection of this debt and of this action as permitted by applicable law, and

C. Grant the Plaintiff such other and further relief as to this Court seems just and proper.

Dated: March 31, 2004

/e/ Jennifer M. Berquist
JENNIFER M. BERQUIST, ESQ., No. 266681
The Gurstel Law Firm
Attorney for Plaintiff
Office and Post Office Address
401 N. 3rd Street, Suite 590
Minneapolis, Minnesota 55401
Telephone: 612-843-1080
Facsimile: 612-664-8222



First National Bank Omaha
P.O. Box 2951
Omaha, NE 68103-2951

Account Number: 4046 7301 4764 0627
Page 1 of 1
Payment Due Date: December 15, 2003
New Balance: \$15,180.78
Minimum Payment Due: \$477.00

030041

LORI A ALKIRE
3804 WILLOW WAY
SAINT PAUL MN 55122-1627

① Make checks payable to
First National Bank
Omaha

\$
Amount Enclosed

Change of Address?
☐ Please check box
and complete
reverse side.

4046730147640627 0000000047700 0000001518078

PLEASE DETACH HERE AND RETURN TOP PORTION WITH YOUR PAYMENT

PLATINUM EDITION VISA

Account Number: F 4046 7301 4764 0627

Payment Due		Account Summary		Credit Line	
Statement Closing Date	11-19-03	Previous Balance	\$ 8,746.61	Total Credit Limit	\$ 15,000.00
Days in Billing Cycle	30	Payments and Credits	- \$ 0.00	Cash Limit 1	\$ 7,500.00
Payment Due Date	12-15-03	New Transactions	+ \$ 6,235.00	Available Credit	\$ 0.00
Amount Past Due	\$ 174.00	Total Billed		Available Cash	\$ 0.00
Minimum Payment Due	\$ 477.00	FINANCE CHARGES	+ \$ 199.17		
		New Balance	\$ 15,180.78		

Purchase Date	Post Date	Transaction Summary	Payments and Credits	New Transactions
11-07	11-10	CASH WELLS FARGO C/A #953 EAGAN MN		\$ 6,200.00
11-07	11-10	CASH FEE/ FINANCE CHARGE		\$ 75.00
11-16	11-19	LATE CHARGE FEE		\$ 35.00

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Charge Summary	Average Daily Balance		Daily Periodic Rate	Corresponding APR
	Current	Old		
Purchases	\$ 4.66	\$ 8,784.89	0.0301%	10.990%
Cash	\$ 2,728.12	\$ 0.00	0.0548%	19.990%
Special+	\$ 0.00	\$ 0.00	0.0000%	0.000%

ANNUAL PERCENTAGE RATE 21.04
Billed Periodic Rate FINANCE CHARGE \$124.17

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First National Bank Omaha
P.O. Box 2951
Omaha, NE 68103-2951

029876

Account Number: 4046 7301 4764 0627
Page 1 of 1
Payment Due Date: January 13, 2004
New Balance: \$15,552.88
Minimum Payment Due: \$788.00

LORI A ALKIRE
3804 WILLOW WAY
SAINT PAUL MN 55122-1627

① Make checks payable to
First National Bank
Omaha

\$
Amount Enclosed

Change of Address?
☐ Please check box
and complete
reverse side.

4046730147640627 0000000078800 0000001555288

PLEASE DETACH HERE AND RETURN TOP PORTION WITH YOUR PAYMENT

PLATINUM EDITION VISA

Account Number: F 4046 7301 4764 0627

Payment Due		Account Summary		Credit Line	
Statement Closing Date	12-19-03	Previous Balance	\$ 15,180.78	Total Credit Limit	\$ 15,000.00
Days in Billing Cycle	30	Payments and Credits	- \$ 0.00	Cash Limit †	\$ 7,500.00
Payment Due Date	01-13-04	New Transactions	+ \$ 70.00	Available Credit	\$ 0.00
Amount Past Due	\$ 477.00	Total Billed		Available Cash	\$ 0.00
Minimum Payment Due	\$ 788.00	FINANCE CHARGES	+ \$ 302.10		
		New Balance	\$ 15,552.88		

Purchase Date	Post Date	Transaction Summary	Payments and Credits	New Transactions
12-17	12-19	LATE CHARGE FEE		\$ 35.00
		74046733353000353062000		
12-19	12-19	OVERLIMIT FEE		\$ 35.00
		74046733353000353061000		

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Charge Summary	Average Daily Balance		Daily Periodic Rate	Corresponding APR
	Current	Old		
Purchases	\$ 4.66	\$ 8,945.90	0.0657%	23.990%
Cash	\$ 0.00	\$ 6,380.42	0.0657%	23.990%
ANNUAL PERCENTAGE RATE 23.99				
Billed Periodic Rate FINANCE CHARGE \$302.10				

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Cardmember's Signature

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Line 1
Line 2
Line 3
Line 4



Account Number: 4046 7301 4764 0627
 Page 1 of 1
 Payment Due Date: February 17, 2004
 New Balance: \$15,952.27
 Minimum Payment Due: \$1,107.00

029606

First National Bank Omaha
 P.O. Box 2951
 Omaha, NE 68103-2951

LORI A ALKIRE
 3804 WILLOW WAY
 SAINT PAUL MN 55122-1627

① Make checks payable to
 First National Bank
 Omaha

\$
 Amount Enclosed

Change of Address?
☐ Please check box
 and complete
 reverse side.

4046730147640627 0000000110700 0000001595227

PLEASE DETACH HERE AND RETURN TOP PORTION WITH YOUR PAYMENT

PLATINUM EDITION VISA

Account Number: F 4046 7301 4764 0627

Payment Due		Account Summary		Credit Line	
Statement Closing Date	01-20-04	Previous Balance	\$ 15,552.88	Total Credit Limit	\$ 15,000.00
Days in Billing Cycle	32	Payments and Credits	- \$ 0.00	Cash Limit †	\$ 7,500.00
Payment Due Date	02-17-04	New Transactions	+ \$ 70.00	Available Credit	\$ 0.00
Amount Past Due	\$ 788.00	Total Billed		Available Cash	\$ 0.00
Minimum Payment Due	\$ 1,107.00	FINANCE CHARGES	+ \$ 329.39		
		New Balance	\$ 15,952.27		

Purchase Date	Post Date	Transaction Summary	Payments and Credits	New Transactions
1-14	1-20	LATE CHARGE FEE		\$ 35.00
		74046734020000020062000		
1-20	1-20	OVERLIMIT FEE		\$ 35.00
		74046734020000020061000		

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Visit us online! Please see our address below.	Charge Summary		Average Daily Balance		Daily Periodic Rate	Corresponding APR
			Current	Old		
	Purchases	Cash	\$ 8.76	\$ 9,200.44	0.0655%	23.990%
			\$ 0.00	\$ 6,511.46	0.0655%	23.990%
ANNUAL PERCENTAGE RATE 23.99						
Billed Periodic Rate FINANCE CHARGE \$329.39						

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